United Nations A/HRC/33/49/Add.3

General Assembly

Distr.: General
13 July 2016

Original: English

Human Rights Council
Thirty-third session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the human right to safe drinking water and sanitation on his mission to Botswana

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human right to safe drinking water and sanitation, Léo Heller, on his mission to Botswana from 9 to 17 November 2015.

Botswana has made impressive progress in development mainly in urban areas, but there are striking inequalities in access to water and sanitation in rural and remote areas, resettlements and poor urban settlements. People living in transition from nomadic to settled life and women and girls suffer the lack of access to water and sanitation disproportionately.

The Government of Botswana should take the extreme drought experienced in 2013 as a learning opportunity to develop a comprehensive strategy to provide uninterrupted access to safe drinking water and sanitation in the foreseen increasing water stress. At the same time, the Government must continue to invest in sanitation and water services to guarantee affordable services for the poor and for marginalized groups.

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Report of the Special Rapporteur on the human right to safe drinking water and sanitation on his mission to Botswana*

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* Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on the human right to water and sanitation, Léo Heller, undertook an official visit to Botswana from 9 to 17 November 2015, at the invitation of the Government. The purpose of the visit was to examine the progress made and identify remaining challenges in ensuring the full realization of the human rights to water and sanitation in the country.

2. During his mission he had the opportunity to meet with representatives of the Ministry of Foreign Affairs and International Cooperation, the Ministry of Minerals, Energy and Water Resources, the Ministry of Health and the Ministry of Environment, Wildlife and Tourism. He also met with the Attorney-General, the Water Utilities Corporation, the Ombudsman, local authorities, civil society organizations and the international community. He visited communities, health facilities and schools in Old Naledi (Gabarone), Kasane, Maun, Sexaxa, Ghanzi, D'Kar, Tubu, Shakarawe and New Xade and talked to community leaders, human rights defenders, women, children and health workers.

3. The Special Rapporteur expresses his appreciation to the Government of Botswana for its cooperation before and during the visit. He thanks the United Nations Resident Coordinator and the country team for their support and assistance. He also thanks all the people who took the time to meet with him and to help him better understand the situation regarding access to water and sanitation in the country. The Special Rapporteur quotes one of the elders with whom he met: "*Metsi ke botshelo jwa motho; motho a ka setshele a sena metsi*" (Water is life; no water, no life).

4. Botswana has been successful in terms of economic growth and development, with one of the world's highest economic growth rates since independence in 1966. Its economy relies on diamond mining, tourism, subsistence farming and cattle raising, all of which demand a great amount of water. Yet, 19 per cent of the population live below the national poverty line and unemployment stands at 20 per cent. Botswana has a semi-arid climate and water resources are scarce. At the time of the visit, Botswana was in an emergency situation, with one of the worst droughts in its history. A significant part of the population was facing severe water shortage and people in the Greater Gaborone area and other cities were under starker water rationing on top of the regular water rationing, with several consecutive days in a week without any supply of water.

5. The Special Rapporteur was impressed by the resilience of the people as well as by the Government's efforts to provide the essential amount of water to the population despite the difficult situation. However, he noted that water rationing hit the poor and people living in vulnerable situations hardest. The severe water scarcity level raised serious human rights concerns about water quality, water quantity, affordability, sanitation conditions and related health impacts. As water stress in Botswana is predicted to continue to rise owing to the effects of climate change and increasing water demand, the Government should not simply consider the water scarcity caused by the long drought as a sporadic emergency. Severe environmental situations should not be immediately translated into water shortage situations that affect people's access to water.

6. Despite the difficult geographical and environmental conditions, Botswana has made impressive overall progress in the water and sanitation sector, with 96 per cent access to

improved water and 63 per cent access to improved sanitation as of the end of 2015.[1] Rural sanitation is still poor and a significant percentage of people still practice open defecation. The Special Rapporteur commends the Government's efforts to submit responses to the UN-Water Global Analysis and Assessment of Sanitation and Drinking Water for the first time in 2014.

II. Legal, institutional and policy frameworks

A. Legal framework

7. Botswana has ratified the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. These international treaties contain legal obligations on the human right to life and obligations related to access to water and sanitation. However, Botswana is one of the few remaining countries that have not yet ratified the International Covenant on Economic, Social and Cultural Rights — a strong legal basis for the human rights to water and sanitation. The Special Rapporteur strongly encourages Botswana to sign and ratify the Covenant as a legal foundation. Recognition of the human rights to water and sanitation is a crucial first step towards realizing access to water and sanitation for all without discrimination. The Covenant does not expect the State to realize these rights immediately. Rather, it provides a framework and guidelines on how to progressively implement these human rights.

8. Botswana has ratified regional human rights treaties, such as the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child, which obliges States parties to take measures to ensure the provision of adequate nutrition and safe drinking water.

9. International laws are not self-executing in Botswana. They require legislative implementation to be effective in national law. Nevertheless, Botswana is bound by international human rights law and principles. Access to safe drinking water and sanitation is a human right derived from the right to an adequate standard of living, which is enshrined in, inter alia, article 11 of the International Covenant on Economic, Social and Cultural Rights and the Universal Declaration of Human Rights. These rights were explicitly recognized by the General Assembly in resolutions 64/292 and 70/169 and by the Human Rights Council in resolution 15/9.

10. According to international human rights law, the State must take concrete and deliberate steps to progressively realize the human rights to water and sanitation. The realization of these rights also requires providing access to adequate and affordable hygiene practices, including handwashing and menstrual hygiene management. Effective measures have to be taken in order to ensure adequate disposal and treatment of human waste. The Government also has an immediate obligation to ensure access to water and sanitation facilities and service on a non-discriminatory basis, especially for disadvantaged or marginalized groups. Even in cases where water and sanitation service provision is delegated to third parties — either private or public companies — the Government is obliged to regulate and monitor the activities of those companies in order to ensure that all aspects of the human rights are guaranteed.

[1] See World Health Organization (WHO) and United Nations Children's Fund (UNICEF), Progress on sanitation and drinking water — 2015 update and MDG assessment (New York, 2015), pp. 58-59, available at www.wssinfo.org/fileadmin/user_upload/resources/JMP-Update-report-2015_English.pdf.

11. The human right to water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use. The human right to sanitation entitles everyone to have physical and affordable access to sanitation that is safe, hygienic, secure, acceptable and provides privacy and ensures dignity, in all spheres of life. These distinct contents of the rights to water and sanitation were explicitly recognized by the Human Rights Council in 2010 in its resolution 24/18 and by the General Assembly in 2010 in its resolution 70/169.

12. The human rights to water and sanitation need to be translated into laws, policies and budgeting. The Constitution of Botswana contains provisions on human rights, including the right to life, but does not explicitly recognize the human rights to water and sanitation. The Water Act (1967) is the principal legal instrument on water and it provides that any person may enjoy "casual use of water in a public stream" for drinking, washing and cooking. However, the Act does not sufficiently deal with water supply and sanitation issues. Botswana also has the Waste Management Act (1998), which defines management of wastes including wastewater, and the Public Health Act (1984), which mandates environmental health officers to ensure that water from the public water supply system is potable.

B. Institutional and policy frameworks

13. The Ministry of Minerals, Energy and Water Resources has the overall responsibility for the coordination of development and operational activities of the minerals, energy and water sectors. The Department of Water Affairs of the Ministry has the role of assessment, planning, development and maintenance of water resources for domestic, agricultural, commercial, industrial and other uses in the whole country. As defined in the Water Act (1967), the State has delegated the power to grant water rights to the Department of Water Affairs and the Water Apportionment Board. The Ministry has a decentralized system whereby the Department of Water Affairs is responsible for developing water resources and handing them over to the Water Utilities Corporation for distribution. Botswana is composed of 16 districts, which are administered by 16 local authorities (district, city or town councils).

14. Botswana carried out a water sector reform between 2000 and 2003, owing to the National Water Master Plan Review, with the aim of separating the roles of water resource management, service delivery and regulation. Following the reform, the Water Utilities Corporation took over drinking water service delivery and wastewater management in all urban areas and in mining centres. At the district level, emptying of latrines and disposing of sludge were handed over from the district authorities to the Water Utilities Corporation. The Water Utilities Corporation, originally created in 1970 by the Water Utilities Corporation Act, is a State-owned company. The Corporation comprises a Chairman and members appointed by the Minister of Minerals, Energy and Water Resources. An audit committee comprising three members of the Corporation oversees the financial reporting process and monitors the Corporation's performance compliance with laws and regulations.

15. The Ministry of Health formulates health policies and ensures their correct interpretation and implementation throughout the healthcare system. It is also responsible for the surveillance of drinking water quality. It has the authority to request the results of water tests from the Water Utilities Corporation, however, there is no agreement mechanism for reporting water quality to the Ministry of Health.

See Botswana Water Act (1967), art. 4 (b).

16. Currently, there is no independent water regulator in Botswana. The Botswana Energy and Water Regulatory Agency Taskforce was established in 2012 with the aim of creating an independent regulator for both the energy and water sectors, including setting tariffs. The competence of an independent regulator is reportedly still under discussion. The role of a regulator is essential as part of the accountability mechanisms. The Special Rapporteur, therefore, calls upon the Government to establish an independent regulator with the competence to monitor the compliance of water and sanitation providers with the normative content of the human rights to water and sanitation. The regulator should be mandated to encourage genuine public participation in decision-making and proper information disclosure and to ensure a mandatory affordability standard in order that water and sanitation are affordable for all.

17. With regards to the policy framework, Botswana's water policy is based on the Botswana National Water Master Plan (1991) as well as on the National Water Master Plan Review (2006), which recommended a series of institutional reforms in the water sector. According to information received, the draft national water policy (2012) was awaiting approval by the Parliament at the time of the Special Rapporteur's visit. The policy stipulates that all water resources belong to and are controlled by the State and are "held in trust on behalf of the people of Botswana". The three essential principles are equity, efficiency and sustainability. The policy considers that "water is a basic human necessity" and prioritizes access to water for "the basic requirements required for human consumption" over livestock, commercial and industrial uses. The policy states that "gender and social equity in accessing water resources will be ensured and, in particular, women shall be empowered to participate fully in issues and decisions relating to sustainable development and management of water resources". These principles are in line with the human rights to water and sanitation, which requires equality and non-discrimination in access to water and sanitation as well as the prioritization of water for personal and domestic use over other uses. The policy also provides for the sustainability and management of water through a participatory process. Both sustainability and participation are important human rights principles.

18. The Special Rapporteur urges Botswana to approve the draft national water policy as soon as possible in order to set the framework for implementing the human rights to water and sanitation, based on its law and policy. He also encourages Botswana to stipulate the prioritization of water for personal and domestic use over other uses, as well as other principles associated with the human rights, not only in policy but in law.

III. Human rights to water and sanitation

A. Access to water and sanitation

19. Water and sanitation services must be accessible to everyone on the premises of households, health and educational institutions, public institutions and places and workplaces.

20. As of the 2015 deadline for the Millennium Development Goals, 96 per cent of the population enjoyed access to improved water sources. Botswana increased coverage for piped water on premises by 52 percentage points during the period from 1990 to 2015[6] and

[5] See Botswana National Water Policy (October 2012), sect. 3.2.2, available at www.water.gov.bw/images/Water%20Policy_November_2012.pdf.

[6] See WHO/UNICEF, "Progress on sanitation and drinking water", p. 11.

is one of 16 countries that increased access to piped water on premises by at least 25 percentage points during that period. As of the end of 2015, Botswana had realized 63 per cent access to "improved" sanitation. These are commendable achievements.

21. While Botswana has significantly expanded piped water networks, access to piped networks in rural areas still remains at 45 per cent. In remote areas such as the Okavango Delta, the proportion of households with access to "improved" water sources is even lower. In rural areas, only 43 per cent have access to improved sanitation. A significant proportion of the population (14 per cent), particularly in rural areas (34 per cent), still practice open defecation. Open defecation is not only a matter of public health, but also a matter of dignity and privacy. Under the 2030 Agenda for Sustainable Development, ending open defecation is an urgent priority.

22. Access to water and sanitation by urban poor is equally a concern. The Self-Help Housing Agency runs a settlement upgrading and low-income housing programme and the councils used to provide water at water standposts free of charge. The population in those areas mostly use pit latrines, which can be a concern for contamination of the groundwater. The high density of the population, such as in the self-help housing areas in Gaborone, is considered a direct cause for increased contamination and deterioration of water sources.[1] Migration from rural to urban areas is continuing and the urban population (58 per cent in 2015) now exceeds the rural population (42 per cent in 2015). The Water Utilities Corporation is carrying out projects to shift from pit latrines and septic tanks to sewerage networks, which is a necessary measure for densely populated areas.

B. Availability of water supply

23. Botswana relies primarily on surface water and groundwater in aquifers as its water sources. There are eight major dams that supply mainly urban areas, while most rural areas are supplied from boreholes. Most of the rivers are located in the northwest, while the population is increasingly concentrated in the urban areas in the south, where rainfall is lower. Therefore, in addition to scarcity of water resources, the country suffers a geographically uneven distribution of water. Furthermore, the major rivers are shared with neighbouring countries, which makes it more challenging to secure stable water resources. The Government has concluded several agreements and commissions with neighbouring countries for sound water management. In 2013, as one of the measures to address the issue of water scarcity, the Government signed a memorandum of understanding with Lesotho and South Africa to initiate a feasibility study on the possibility of transferring water from a river in Lesotho to Botswana. Water demand is expected to grow from 200 million cubic metres in 2013 to 335 million cubic metres by 2020, and more than half of it will be consumed by the domestic sector and small industries.[2] The average consumption for personal and domestic use per capita remains relatively acceptable in villages (0.15 cubic metres or 150 litres per day). In cities and towns, however, consumption can be as high as 0.55 cubic metres or 550 litres per day.[3]

[1] Botswana, *Population and Housing Census 2011: Analytical Report* (Statistics Botswana, 2014).

[2] Botswana, Ministry of Minerals, Energy and Water Resources, *Botswana Integrated Water Resources Management & Water Efficiency Plan*, vol. 1, main report (May 2013), available at www.gwp.org/Global/Activities/Impact%20Stories/Further%20reading/IWRM%20WUE%20Plan.pdf.

[3] Government of Botswana and United Nations Development Programme, "Reflecting on the challenges of attaining a green economy for Botswana: water policy brief" (2012), available at https://sustainabledevelopment.un.org/content/documents/1007national%20Report%20Water%20-%20Botswana.pdf.

24. Rainfall is already decreasing and the temperature rise in Botswana is expected to exceed the world average. A study shows that, with the combination of climate change and an increasing demand for water, the level of water stress in Botswana is expected to double from 1.48 (low-medium risk) in 2010 to 3.00 (high risk) in 2040.[5] One government official with whom the Special Rapporteur met during his visit admitted that Botswana would face a catastrophic situation if the current level of water availability continued and if further measures were not taken to address it. Given the already water scarce environment in Botswana, there is an urgent need for the Government to take strategic measures to secure water resources, on the one hand, and to manage water demand, on the other hand. Another challenge to water resources management in Botswana is the fact that self-providers consume half of the water in Botswana for their own use in agriculture, mining and other sectors. The Government has been making efforts to manage water demand, for instance, by investing in technology for efficient water use in mining, agriculture and other industries. One of the priorities of the Ministry of Environment, Wildlife and Tourism is water conservation and wastewater management. However, the Government needs to take a comprehensive approach to prioritize the securing of water for personal and domestic use and allocate sufficient institutional, financial and human resources to manage water resources and water demand. The Special Rapporteur takes the opportunity to remind the Government that the human rights to water and sanitation provide useful guidance for all these measures, including planning for resilience to climate change. The human rights framework includes the principles of sustainability and non-retrogression, equality and participation as well as the right to information. Prioritization of water for personal and domestic use (i.e., drinking, personal and household hygiene, food preparation, washing of clothes, personal sanitation) over other uses of water must be explicitly guaranteed.

25. Water rationing is regularly implemented as a measure to address the scarcity of water resources. Consequently, the supply of water is unreliable. Given the extreme drought situation at the time of the visit, the Ministry of Minerals, Energy and Water Resources had imposed stricter water rationing measures. In late October and the beginning of November 2015, only limited areas of the Greater Gaborone area had a regular supply of water, while some areas had water with low pressure and others had no water at all. Those who had the means were buying water from private companies and storing it in large tanks. Many people with whom the Special Rapporteur met in Gaborone were simply storing water in buckets and jugs. In a health centre that the Special Rapporteur visited, there was no water in the toilets or in the examination rooms. In fact, the centre was in the process of procuring a water tank, in the middle of the drought, with the support of the Government. Since Botswana constantly experiences water scarcity and water rationing, contingency plans, such as the installation of large water tanks in public institutions, must be put in place and implemented in advance. One of the human rights obligations of States is that water supply must be continuous. Moreover, retrogression in access to water can be considered a human rights violation. While controlled water rationing may be unavoidable in extreme situations, frequent lack of water in pipelines can lead to increased contamination of the water mains through the intrusion of harmful substances. Experience suggests that water rationing through intermittent supply is a false economy, as this invariably leads to increased losses. Rationing also poses a pattern of discrimination as it impacts the most disadvantaged hardest.

26. Water loss is a serious concern in a water scarce country like Botswana. Half of the water produced is wasted due to leakage and inefficient management practices. By

[5] Andrew Maddocks, Robert Samuel Young and Paul Reig, "Ranking the world's most water-stressed countries in 2040" (World Resources Institute, 2015), available at www.wri.org/blog/2015/08/ranking-world%E2%80%99s-most-water-stressed-countries-2040.

increasing available water resources or reducing water losses, a 46 per cent increase in water availability can be expected." Under the leadership of the Ministry of Minerals, Energy and Water Resources and with support from international partners, the Water Utilities Corporation, for instance, is implementing a project to reduce water loss by up to 22 per cent by 2018. The Corporation announces the current water supply situation and the water shutdown schedule. Reportedly, it also visits households and schools to encourage water saving by repairing leaking taps and pipes. These are welcome efforts as stakeholder participation and their right to information are essential to managing water losses and wastage and increasing water availability.

27. Water resources management and the provision of water and sanitation services are inextricable. Sustainable water resources are inseparable from sustainable water provision. The Government needs to develop a concrete strategy to increase the availability of water through other measures and not rely on intermittent supply on a long-term basis. Water allocation also needs to be transparent and participatory, taking into account competing water demands. The human rights to water and sanitation do not define a fixed daily water quantity, however, they do oblige the Government to set standards for the availability of water and sanitation by assessing local conditions and requirements and referring to relevant studies. The Government needs to take it into consideration that children, pregnant women and people with chronic diseases are particularly vulnerable to illnesses, such as diarrhoeal diseases, when sufficient water is not available. The 2012 draft national water policy does not specify the target water quantity per household or per capita. However, it states that the Government will "determine and regularly update water demands and supply options for all areas supported by service strategies for medium- and long-term planning". In an environment in which water stress is expected to increase, it is particularly important to set up a system to continuously monitor and evaluate available water resources options so as to respond to water demand.

C. Quality of water and sanitation services

28. The Botswana Standards for Drinking Quality Water Specifications requires that potable water meet its minimum standard and that of the World Health Organization Drinking Water Quality Guidelines. The Water Utilities Corporation monitors the quality of drinking water according to this standard. While the Ministry of Health has the responsibility of surveillance of drinking water quality and performs some tests, its role does not seem effective since there is no systematic exchange of information on sampled water quality between the Ministry of Health and the Water Utilities Corporation. The Water Utilities Corporation is not obliged to report the results of its monitoring to the surveillance entity either.

29. According to the official data provided by the Water Utilities Corporation, the compliance level of microbiological analysis of 8 out of 34 monitoring areas in the period from July to September 2015 was below 50 per cent and in 3 monitoring areas, there was no proper data available. This is a worrying result as water safety is one of the critical normative content of the human right to water and has a direct impact on people's health.

30. While the Water Utilities Corporation monitors the quality of borehole water that is not connected to the network, the Special Rapporteur was informed that the results of water quality monitoring is not systematically or easily available for concerned consumers. In villages that the Special Rapporteur visited, some people stated that the Water Utilities

[9] Government of Botswana and UNDP, "Reflecting on the challenges of attaining a green economy for Botswana", p. 5.

Corporation sometimes collected samples of water, but they had never been informed of the results. The right to information concerning access to water and sanitation is an important element of human rights and people have the right to be informed of the quality of the water that they are consuming and of the associated risks. The Government also has a responsibility to provide guidance to conserve the quality of water in boreholes.

31. Regarding the quality of sanitation services, as of 2015, approximately one-fourth of households had access to waterborne sanitation. There are two major wastewater treatment facilities in Gaborone and Francistown, however, wastewater treatment is not sufficiently carried out. The Special Rapporteur was informed that the capacity of the Francistown facility was currently not sufficient. Some localities use stabilization ponds for wastewater treatment, however, the lagoons are usually overloaded and not adequately maintained.

32. On the other hand, almost half of the population use pit latrines either on their premises or in shared facilities. Pit latrines with proper slabs could be an acceptable solution if they maintain certain standards, including the protection of groundwater, and provide privacy, especially for women and girls. If the household is located in an area where the groundwater table is shallow, the Government will not give permission to use pit latrines or septic tanks with soakaway, but will rather encourage the use of conservancy tanks. Nevertheless, support from the Government in providing guidance regarding latrine construction and sludge management appears insufficient. As a consequence, potential contamination of water sources caused by inadequate management of pit latrines is still a concern in the country.

33. In the Special Rapporteur's view, the Government could explore alternative sanitation in rural areas, for instance, composting toilets, as a measure for adapting to the effects of climate change. These types of solutions significantly reduce water demand and also contribute to protecting precious water sources from wastewater contamination. The human right to sanitation does not stop at access to a toilet. Sanitation is defined as a system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene. People in rural areas told the Special Rapporteur that they were happier with the water supply and pit latrine emptying services that used to be provided by the district authorities. According to them, water provision became unreliable and emptying latrines became unaffordable after the Water Utilities Corporation took them over. They expressed concern that it was difficult to identify who to consult when problems with water and sanitation occurred. The Government has the obligation to ensure that toilets are hygienic to use and to maintain and that waste matter is safely managed even when such services are delegated to other entities. To safeguard the health benefits of access to sanitation and to protect water resources, standards and targets for the full sanitation cycle must be set, from wastewater collection to transport, treatment and disposal or reuse.

34. Related to the quality of water and sanitation services, waterborne diseases, particularly diarrhoea, are still common, in particular in rural areas. While a decrease in the death rate was reported by WHO for 2000 to 2012, diarrhoea was still the cause of 6 per cent of deaths of children under 5 years old in 2013. The under-five mortality rate for 2013 was 47 per 1,000 live births,[7] with an estimated 180 under-five deaths due to diarrhoeal diseases.[8] Responding to the severe drought, in August 2015, the Ministry of Health issued a statement on precautions and interventions to be taken during water and power cuts. It indicated that water shortages at that time might result in public health hazards and advised

[7] See WHO, "Botswana: WHO statistical profile" (last updated January 2015), available at www.who.int/gho/countries/bwa.pdf?ua=1&ua=1.

[8] See UNICEF, "Botswana: Statistics", available at www.unicef.org/infobycountry/botswana_statistics.html.

several precautionary measures such as boiling water. Fortunately, according to relevant authorities and health workers who the Special Rapporteur interviewed, there had been no reports about diarrhoea outbreaks due to the extreme water shortage at the time of the visit. The Government should keep an eye on developments as the lack of water often leads to unhygienic conditions and high risks of water-related diseases.

D. Affordability of water and sanitation

35. The human rights to water and sanitation require that the price of water and sanitation and the associated direct and indirect costs and charges be affordable and not compromise or threaten a person's capacity to satisfy other fundamental human rights, such as the rights to food, health, housing or education. The human rights framework does not require that the Government directly provide basic services for free. Rather, it requires the State to create an enabling environment for people to fully enjoy their human rights. However, in cases where people cannot accede to their rights for reasons beyond their control, including when they cannot afford to construct sanitation facilities, the Government has the obligation to provide sanitation services directly. In situations where people do not have the economic capacity to access drinking water at all, as is usually the case of people in situations of homelessness or chronic unemployment, the Government also has the obligation to ensure access to water, in some cases, free of charge.

36. Botswana currently does not have an affordability standard for personal and domestic water or sanitation use. The 2012 draft national water policy proposes a strategy to "monitor household expenditure on domestic water supplies to ensure affordability such that the maximum household expenditures account for less than 5 per cent of household disposable income". The Special Rapporteur again encourages Botswana to adopt the draft national water policy as soon as possible and to focus its efforts on its implementation. Setting a standard and a monitoring mechanism is an important step for realizing affordable access to water and sanitation. There are several different international recommendations regarding what proportion of household income should be spent on water and sanitation but, from a human rights perspective, additional measures must be put in place in order to ensure that no one who cannot afford to devote that percentage of their income to water and sanitation for various reasons is deprived of adequate sanitation and sufficient quantities of safe and accessible water.

37. Under the water sector reform that started in 2009, the Water Utilities Corporation streamlined its tariff schemes: one for the public sector and another for domestic, commercial and industrial use. The Corporation adopted an increasing block tariff system with a minimum fee of 20 pula (approximately $1.71) for the latter sector and 50 pula for the public sector. For domestic, commercial and industrial use, the tariff starts at 2 pula for the first five cubic metres, increasing to 8 pula (5 to 15 cubic metres), 13 pula (15 to 25 cubic metres), 20 pula (25 to 40 cubic metres) and 25 pula (above 40 cubic metres). In addition, the Water Utilities Corporation charges all customers for wastewater services connected to the central wastewater systems and applies an increasing block tariff without a minimum fee. The tariff is 0.5 pula for the first five cubic metres, increasing to 2 pula (5 to 15 cubic metres), 3 pula (15 to 25 cubic metres), 4 pula (25 to 40 cubic metres) and 5 pula (above 40 cubic metres). Based on the average consumption per capita per day in rural areas, a household of four is estimated to pay about 163 pula ($14) per month. In rural areas, approximately 13,000 households live below $1 per day as of 2009/10.[7] For those

[7] See Botswana, *Botswana Core Welfare Indicators Survey 2009/2010*, main report, vol. 1 (October 2013), available at www.bw.undp.org/content/dam/botswana/docs/Poverty/Botswana%20Poverty%20Survey%202009_2010.pdf.

households, water and sanitation charges may not be affordable. In fact, the Special Rapporteur heard complaints about water disconnections owing to non-payment of water bills. It is contrary to human rights principles to disconnect water when people do not have the means to pay their bills. There should be a safeguard system for persons living in poverty and persons with special needs, including health conditions.

38. In rural areas, 47 per cent of households still rely on unimproved water sources, including public water standpipes. Public water standpipes had been free of charge for over 40 years, but the Water Utilities Corporation is introducing prepaid metres for the public water standpipes. This new charge is likely to affect people living in rural areas, whose income levels are often lower than those living in urban areas. While the human right to water does not require the provision of water for free and it is understandable that some charges will encourage people to save water at the water points, the Special Rapporteur is concerned about the general application of the new charge. He is also concerned that there is no clear safety net for those who cannot afford the new charge.

39. The Special Rapporteur was concerned about a similar situation regarding sanitation. District authorities used to provide sludge collection services, but this responsibility was handed over to the Water Utilities Corporation at the district level and at a much higher rate following the sector reform. District authorities used to charge 30 to 100 pula per operation, but the Corporation charges 600 pula (\$53). The Special Rapporteur was informed that many people could not afford this charge and that many pit latrines were overflowing. In contrast, wastewater tariffs are extremely low, which means that those who are connected to the central system and who tend to be better off economically, are benefiting from a lower tariff for sanitation.

40. In principle, the increasing block tariff encourages water savings and affordability for low-income households. However, such a tariff system carries challenges: the poor are often charged a higher tariff because they have large families and water meters are shared. Compared to other countries, it is also a unique tariff scheme as it sets the same price for domestic, commercial and industrial users.

41. From a human rights perspective, these tariff schemes for water and sanitation services raise a few concerns. Firstly, enterprises who can afford to pay a higher tariff are undercharged by these relatively low tariffs. This means that individual households who are connected to the central system may in fact be subsidizing enterprises, contrary to the trend in most other countries, where industrial and commercial tariffs are higher and subsidize domestic use. In addition, individual households that are not connected to the system, and which are usually worse off, not only lack assistance from the Government to realize their human rights to water and sanitation, but may also be indirectly subsidizing enterprises and better-off households through taxes. Secondly, this situation raises concern that the utilities do not collect enough revenue to invest in operation and maintenance or to extend the connection networks to those who are not served. According to UN-Water, in order to maintain the existing systems, 75 per cent of the water and sanitation budgets worldwide should be devoted to operation and maintenance.[7]

42. The Special Rapporteur urges the Government to revisit the tariff schemes and the new charges on public water points in order to put in place clear mechanisms to ensure affordable water and sanitation for all, including those who cannot pay their bills for reasons beyond their control, such as unemployment. At the same time, the tariff schemes should be set so as to balance the sustainability and the affordability of water and sanitation services. Similar affordability standards for sanitation must be established. In setting such

[7] WHO, "UN-Water global analysis and assessment of sanitation and drinking water (GLAAS) 2012 report: the challenge of extending and sustaining services" (Geneva, 2012), p. 29.

standards, the Government must consider both onsite and networked sanitation and the full costs of sanitation, including wastewater collection, transport and disposal or reuse.

E. Sustainability of water and sanitation services

43. The Water Utilities Corporation is in a deficit situation and relying on the Government to subsidize its operations. The net loss was estimated at 346.6 million pula (S30.2 million) in 2014. According to the Corporation, the higher public sector tariff is at an adequate level for cost recovery. This raises concerns over the future capacity of the Corporation to face the persisting challenges in the water and sanitation sector.

44. Sustainability is an important human rights principle. Water and sanitation services must be available for present and future generations and the provision of services today should not compromise the ability of future generations to realize those rights.[35] Cost recovery is important for a sustainable system, as it ensures coverage of operation and maintenance costs and supports access to water and sanitation by the poor through cross-subsidies. Once services and facilities have been put in place, positive changes must be maintained and retrogression must be prevented. The economic and social dimensions of sustainability must be balanced. On the one hand, sufficient revenues need to be raised to ensure sustainability in service provision. In Botswana, there seems to be room to increase revenues from those who can afford it, such as commercial and industrial users and residential consumers who are financially better off than others. On the other hand, sustainability must be achieved in a way that ensures affordability for all social groups, including those living in poverty.

IV. Right to justice and accountability

45. Article 12 of the Constitution guarantees the right to freedom of expression, which includes the "freedom to receive ideas and information without interference" and "freedom to communicate ideas and information without interference". The right to information includes the right to receive information so as to make informed decisions regarding the human rights to water and sanitation.

46. The Ministry of Minerals, Energy and Water Resources decides on the water rationing schedule and presents the information at a press conference. The Ministry also disseminates such information in print media, the government's five newspaper, radio and its website. While this is an important effort, there is no standard rule on the communication of such information. People expressed their dissatisfaction to the Special Rapporteur at the short notice or unclear information provided regarding water rationing. Some residents said that it was difficult to plan and prepare for the water rationing measures in advance. The Special Rapporteur was informed by communities in rural areas that it was not clear where to report problems with the water supply. People were not informed of the results of sampling of borehole water either.

47. As mentioned previously, there is no independent regulator in Botswana to monitor the performance of the Water Utilities Corporation and local authorities with regard to the provision of water and sanitation. The Ombudsman has the authority to investigate administrative justice issues and make recommendations. However, the Ombudsman does not have the mandate to monitor broader human rights issues, including the human rights to

[35] See A/HRC/24/44 para. 20.

water and sanitation. The Office of the President had initiated a process to amend the Ombudsman Act in order to include the function of a human rights institution.

48. Establishing a mechanism to which people can bring human rights concerns in a free, active and meaningful way is crucial to hold authorities accountable for the human rights to water and sanitation. Botswana should make the human rights to water and sanitation enforceable at the national level. At the international level, the Special Rapporteur calls upon the Government to ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, which will allow people to bring individual cases on the human rights to water and sanitation to the attention of the Committee on Economic, Social and Cultural Rights.

V. Maximum available resources and budgeting for the rights to water and sanitation

49. The human rights to water and sanitation must be realized progressively, using the maximum available resources. This means that Botswana needs to allocate budgets specifically for water, sanitation and hygiene, including menstrual hygiene management.

50. In the 2015 Water, Sanitation and Hygiene (WaSH) Performance Index, Botswana is ranked 104 out of 117 countries in relation to the progressive realization of the human rights to water and sanitation. The index compares the rate of change of specific countries in improving equity and access to water and sanitation to best-in-class rates of change among countries at similar levels of water and sanitation coverage to generate a benchmark value. The ranking suggests that, compared to other countries, Botswana is not investing its maximum available resources to progressively realize the human rights to water and sanitation without discrimination.[7]

51. In his 2015 budget speech, the Minister of Finance and Development Planning[8] stated that, out of the total 12.93 billion pula for the 2015-2016 development budget, the largest share (3.32 billion pula or 25.7 per cent) will be allocated to the Ministry of Minerals, Energy and Water Resources. Development projects include water-related projects such as North-South Water Carrier II (500 million pula) and Maun Water and Sanitation (89 million pula). The Government is reportedly aiming to improve the performance of the energy and water sectors in terms of sustainable development through an increased budget allocation for these sectors. The budget allocation is an essential step for providing access to water and sanitation for all. The increased budget should target not only water resources management and large civil constructions, but also increased access to water and sanitation in underdeveloped areas such as rural areas and new settlements.

52. Often forgotten in the human rights to water and sanitation is the cost of construction and maintenance of onsite sanitation and hygiene, including menstrual hygiene management in schools and other public institutions. In a decentralized structure, it is critical that the budget allocation to local authorities allows them to provide the support necessary to help those who are not served by the Water Utilities Corporation or to those who cannot afford water and sanitation services.

53. The benefits of investing in sanitation far outweighs the costs. For each dollar invested to achieve universal access to basic sanitation at home, an estimated benefit of

[7] See Ryan Cronk and others, "The WaSH Performance Index Report 2015", available at http://waterinstitute.unc.edu/wash-performance-index-report/.

[8] See Botswana, Minister of Finance and Development Planning, "2015 budget speech", available at www.gov.bw/global portal%20exam/2015%20budget%20speech%20by%20honourable%20m.pdf.

three dollars would be enjoyed. The benefits of investing in water, sanitation and hygiene are particularly evident in improved health, prevention of diseases such as diarrhoea and reduction in child mortality. Improved health will increase adults' productivity and children's attendance at school. In addition to monetary benefits, water, sanitation and hygiene have positive impacts on economic, social and sustainable development in the form of dignity gained, progress towards realizing gender equality and the avoidance of environmental degradation.

VI. People of special concern

54. Although Botswana has achieved impressive progress in overall development, the situation regarding access to water and sanitation still varies depending on location and economic and social status. Some segments of the population with whom the Special Rapporteur met during his visit have particular difficulties in accessing water and sanitation.

A. Persons living in rural areas

55. Although Botswana has expanded its piped water networks significantly, in rural areas, the proportion of households with access to improved water sources is still low. The lack of access to water on the premises means that people have to go to collect it from a water standpoint, a borehole, a river or other source. In rural areas without networks, the Special Rapporteur observed that water consumption per person seemed very low at 15 to 20 litres per person per day. This is far below the basic necessary water level in emergency situations, which is 50 litres per person per day. A WHO study revealed that with access to 20 litres of water per person per day, the health concern level is considered high as hygiene practices are difficult to carry out with this amount.[1] The residents of a village that the Special Rapporteur visited were fetching brown water from the river and drinking it directly because they could not afford or did not have access to fuel to boil water.

56. Regarding sanitation, a significant proportion of people in rural areas uses pit latrines. The Water Utilities Corporation charges for emptying pit latrines based on the distance between the town centre and the house. This could be an unfair charge for households living in remote areas. The Special Rapporteur recommends that the Corporation explore a cross-subsidy system for charging for this service and even a fiscal subsidy in view of reducing the price to a reasonable level for all. Some households use non-regulated private companies which provide cheaper services. This also implies affordability concerns, but also raises public health concerns as the wastewater may not be managed properly. In addition, a large proportion of the population still practise open defecation in the bush. The Ministry of Health conducts some awareness-raising activities and raising awareness of health risks among the population is a human right obligation of the State. The Special Rapporteur reminds the Government that it should provide the support necessary for infrastructure alternatives and to change current practices.

57. This disparity between urban and rural areas can be explained partly by the Government's particular development policy for villages and settlements. The revised National Settlement Policy (2004) divides settlements by population size, economic potential and other factors, aimed at guiding national planning and providing a framework to guide the distribution of investment. Remote-area dweller settlements with a population of 250 to 499 are entitled to a set of basic services, including water. If the population is

[1] WHO, *Domestic Water Quantity, Service Level and Health* (Geneva, 2003).

smaller, informal water and sanitation services are provided. According to human rights law, the State has the obligation to ensure access to water and sanitation for everyone, without discrimination, wherever he or she lives. This does not mean that everyone has to receive the same type of services. The Special Rapporteur observed, however, that, in reality, informal services tended not to fulfil the normative content of the human rights to water and sanitation. The Government of Botswana should revisit the remote-area dweller settlement policy from the point of view of ensuring equal access to water and sanitation for everyone regardless of where he or she lives.

B. People in transition from nomadic life and in resettlements

58. The Special Rapporteur observed inadequate water and sanitation situations both in urban and rural poor areas. However, the lack of access to water and sanitation in settlements where traditionally nomadic communities, including San communities, have settled over the past 25 to 30 years, as well as in their resettlements, was a particularly grave concern. The Special Rapporteur met with some San communities, which comprise an estimated 50,000 to 60,000 people. They are a traditional hunter-gatherer people and many of them have shifted from a nomadic to a semi-settled or settled lifestyle. The population of some of their villages was larger than the 250-people requirement to be entitled to basic services, yet there was no water connection. Part of the reason for that situation was the communities' desire to maintain their own education system, traditional lifestyle and land uses; therefore, they chose not to be part of the formal government structure. In 2009, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people recommended that the Government incorporate respect for and recognition of traditional systems into the land-board system.[3] There does not seem to be great progress in this regard.

59. In the Shakawe community of Okavango sub-district that the Special Rapporteur visited, a pipeline was connected to the public water point, but people did not know why the Water Utilities Corporation sometimes supplied water through the pipeline and sometimes delivered water by truck to tanks in the schoolyard. Some told the Special Rapporteur that the Community Committee had brought the issue to the attention of the local authorities on several occasions since 2009, as well as to members of Parliament. However, they were told that it would soon be sorted out. Since the community was using the water from the tanks located in the schoolyard, only teachers could call the Corporation to deliver water when the tanks were empty. The provision of water was not systematic and public water tanks were sometimes empty for four to five consecutive days. The public water tanks in the community that the Special Rapporteur visited were empty and most of the members of the community had gone looking for water in a village that was 20 kilometres away. The community was tired of the lack of will on the part of the authorities to provide water to the San community without discrimination even though a pipeline was already connected.

60. The Central Kalahari Game Reserve, created in 1961 to preserve wildlife resources, was also ancestral lands to some San communities. In 1985, the Government decided that the communities' new, more settled way of living with water boreholes, for example, was no longer compatible with the objective of the Reserve and it decided to relocate the residents off the Reserve. Most of the residents were relocated between 1997 and 2001 and, in 2002, the Government terminated the provision of services inside the Reserve. A group of residents filed an appeal with the High Court to claim their right to continue to live in the Reserve. In 2006, the Court ruled that the eviction was unlawful, but it did not order the

[3] See A/HRC/15/37/Add.2, para. 88.

Government to provide access to water and sanitation in the Reserve. In 2011, the Court of Appeal held that the applicants did not need the authorization of the Government to use the Mothomelo borehole and that they could open new wells in the vicinity. The Government has allowed the 243 applicants to return to the Reserve — some with one-month entry permits — but it has not provided any assistance regarding access to water and sanitation.

61. Based on information received during interviews with residents of New Xade, a resettlement outside the Reserve, people in Molapo in the Reserve struggled to secure water by traditional methods, such as harvesting water from rain and certain fruits. In 2009, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people already noted that indigenous people who had remained on or returned to the Reserve faced harsh and dangerous conditions due to a lack of access to water, a situation that could be easily remedied by reactivating the boreholes in the Reserve.[16] Some communities appeared to be caught in the transition from their nomadic way of living to living in a settlement. They could no longer move freely to look for water owing to restrictions inside the Reserve. At the same time, they did not receive adequate water services from the State in their settlements. People also opted to return to the Reserve, even temporarily, because they were bored in the resettlement without any work.

62. The exercise of their cultural or other human rights by these communities must not be the reason why they are excluded from access to water and sanitation services. In the report on her visit to Botswana in 2014, the Special Rapporteur in the field of cultural rights stated that communities were willing to develop economically, but were not always ready to follow the model of the Government, preferring instead to seek alternatives that would enable to them to better reconcile economic development and the preservation of specific ways of life and world visions.[17] This also applied to water and sanitation. Meaningful consultation with communities is key to designing a sustainable solution for the communities concerned; therefore the Special Rapporteur urges the Government to continue and to strengthen its dialogue with the communities and to ensure equal and adequate access to water and sanitation for those in transition from nomadic to settled life and those living in resettlements.

C. Women and girls

63. The 2011 Population and Housing Census revealed that male-headed households had a higher rate of access to piped water indoors (31.2 per cent) than female-headed households (29.1 per cent) and that female-headed households relied more on piped water outdoors and on communal or neighbours' water sources (43.2 per cent) than male-headed households (36.9 per cent). The Census also indicated that a smaller percentage of female-headed households (48.2 per cent) had access to individual sanitation solutions (own flush toilets, own pit latrines, among others) than male-headed households (54.1 per cent). In either case, women and girls tended to be disproportionally affected by the lack of access to water and sanitation and also bore a heavier burden with respect to collecting and treating water and maintaining sanitation facilities. When sanitation facilities were not on the premises, the risks of privacy and security increased for women and girls. During his visit, the Special Rapporteur saw women and children carrying water in various types of containers and in jerrycans. This task obviously hindered women and children from fully exercising their other human rights such as the rights to work and to education.

[16] Ibid., para. 98.
[17] See A/HRC/31/59/Add.1, para. 48.

64. In 2010, the Committee on the Elimination of Discrimination against Women urged the Government to pay special attention to the needs of rural women and women heads of households and ensure that they participated in decision-making processes and had full access to justice, education, health services and credit facilities.[7] Despite overall progress in development, the Special Rapporteur observed the same challenges, such as the lack of women's participation in decision-making relating to water and sanitation and the disproportionate burden on women caused by the lack of access to water and sanitation.

65. Inadequate water, sanitation and hygiene in schools particularly affect girls. Some girls simply did not use the toilet in school because of the poor sanitation facilities and, often, the absence of menstrual hygiene management. The Special Rapporteur was informed that girls did not eat or drink water until they went home so that they would not have to use the toilet in school. One girl who he interviewed said that although there was a disposal service, it was difficult to manage menstrual hygiene without water in school. Menstrual hygiene management that ensures privacy and human dignity is an important, but often forgotten, component of the human rights to water and sanitation.

VII. Conclusions and recommendations

66. **Botswana is known as a success story of stable economic growth and development. It upholds the core human rights principles of equality and non-discrimination in its Constitution, legislation and policies. However, in the shadow of the impressive progress made mainly in urban centres, there exists striking inequalities in access to water and sanitation in rural and remote areas, resettlements and poor urban settlements. People in transition from a nomadic to a settled life and women and girls suffer the lack of access to water and sanitation disproportionately.**

67. **In addition to geographic challenges, Botswana frequently experiences droughts and is expected to be increasingly affected by climate variability. At the time of the Special Rapporteur's visit, the country was experiencing an emergency situation with one of the worst droughts in its history. The Special Rapporteur was concerned that the lack of water resources was directly affecting continuous access to water and sanitation.**

68. **The Special Rapporteur is confident that Botswana, which has achieved rapid progress since its independence in 1966, has the capacity to reach out to all populations, particularly those in rural and remote areas, who have not equally benefited from such development, including in access to water and sanitation. Regardless of the delegation of water and sanitation services to a State-owned entity or local authorities, the primary obligation to realize the human rights for all rests on the national Government.**

69. **At the same time, the Government must continue to invest in sanitation and water services in order to guarantee affordable services for the poor and marginalized groups, whether directly or through local authorities and the Water Utilities Corporation. The good news is that water and sanitation services are known to be financially beneficial investments.**

70. **In order to address an extreme shortage of available water, such as in the case of the drought that prevailed at the time of his visit, the Special Rapporteur recalls that the State obligation to use the maximum available resources includes international cooperation. On the one hand, the Government should identify its needs**

[7] See CEDAW/C/BOT/CO/3, para. 40.

and request assistance, and on the other hand, development partners should continuously offer their support, financially and otherwise, to the people of Botswana.

71. The Government of Botswana should learn from the extreme drought experienced in 2011 and develop a comprehensive strategy for providing uninterrupted access to safe drinking water and sanitation in the foreseen increasing water stress. In order to initiate such a comprehensive strategy, the Special Rapporteur is hopeful that the State will consider the 2012 draft national water policy, which sets forth equality and non-discrimination as principles, and move forward to the implementation stage.

72. In this regard, the Special Rapporteur recommends that the Government of Botswana:

(a) Adopt the draft national water policy in order to approach water and sanitation issues in a comprehensive manner guided by the principles and normative content of the human rights to water and sanitation. Such a policy should include a long-term strategy for sustainable water resources management, taking into account the foreseen increase in water stress;

(b) Immediately adopt measures to improve water treatment, including disinfection of the entire water supply system and revisiting water rationing measures;

(c) Set up a systematic water quality monitoring between the Water Utilities Corporation and the Ministry of Health and increase the frequency of the water quality monitoring programme carried out by the Department of Water Affairs, regardless of the creation of an independent regulatory body;

(d) Adopt special measures to protect the poor and people living in vulnerable situations from the impacts of water rationing both in normal circumstances and during emergency situations;

(e) Review the tariff system, particularly the scheme of applying the same tariff to households and businesses, in order to balance the sustainability and affordability of water and sanitation services particularly for the poor;

(f) Establish a safeguard system to protect access to essential water and sanitation for those living in poverty and those with special needs, including health conditions, through the provision of financial assistance, special tariffs, subsidies or other measures;

(g) Sign and ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, guarantee the human rights to water and sanitation and prioritize water supply for personal and domestic uses in national legislation;

(h) Establish an independent regulatory mechanism with the mandate and adequate financial and human resources to monitor the implementation of the human rights to water and sanitation, including good quality water and affordable services;

(i) Revisit the National Settlement Policy in view of providing equal access to water and sanitation for all, regardless of where they live;

(j) Continue and strengthen dialogue with communities who are living a nomadic life or who are in transition from a nomadic to a sedentary life to find sustainable solutions for their access to water and sanitation;

(k) Increase the budget to the maximum available level to progressively realize the human rights to water and sanitation and target underdeveloped areas, such as rural areas and new settlements, to ensure equality;

(l) Establish clear budget lines to provide assistance to the water and sanitation systems that are not connected to the central network, particularly in urban periphery, rural and remote areas;

(m) Explore cross-subsidy and fiscal subsidy systems for emptying pit latrine services to ensure fair charges;

(n) Invest, including human resources, in the maintenance and operation of new and existing services in order to avoid deterioration in the services currently provided and provide financial and technical support to the districts;

(o) Increase the participation of women in decision-making relating to water and sanitation and take special measures to reduce the disproportionate burden on women caused by the lack of access to water and sanitation;

(p) Improve access to water, sanitation and hygiene in schools, in particular install menstrual hygiene management systems in all schools, as well as in health centres;

(q) Strengthen access to information, including by setting a standard rule on the communication of water and sanitation-related measures taken by the Government to enable people to make informed decisions regarding the human rights to water and sanitation.

(r) Strengthen the rights to access to justice and accountability, including by accelerating the efforts of the Office of the President to amend the Ombudsman Act to include the role of a human rights institution.

73. The Special Rapporteur recommends that the international community:

Strengthen support to Botswana during emergencies. For a longer-term strategy, neighbouring countries are encouraged to cooperate and promptly conclude agreements on the use of transboundary water resources.